**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is approved for reporting or not)
**[Chapter VIII, Rule 32(2)(b)]**

Description of Case

Writ Petition No. 234 (S/S) of 2004

Dr. Lalit Kumar Sharma. ….Petitioner.

**Versus**

State of Uttaranchal and two others. …..Respondents.

A.F.R. (Approved for Reporting)

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~~Not Approved for Reporting~~

Date of Decision July 12, 2005

**Initials of Judge**

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**(Judgment Reserved)**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Writ Petition No. 234 (S/S) of 2004

Dr. Lalit Kumar Sharma,
son of Sri M.B. Sharma,
resident of 45, Bara Bazar,
Mallital,
Nainital. **….Petitioner.**

Versus

1. State of Uttaranchal, through the Secretary, Department of Cooperative Government of Uttaranchal, Dehradun, Uttaranchal.

2. Registrar, Cooperative Societies, Uttaranchal, Almora Camp Office, Dehradun.

3. Additional Registrar, Cooperative Societies, Uttaranchal, Almora Camp Office, Dehradun.

**…..Respondents.**

**Hon'ble M.M. Ghildiyal, J.:**

Heard Sri C.K. Sharma, learned counsel for the petitioner and learned standing counsel, who has accepted notice on behalf of respondents.

Learned counsel for the parties are agreed to decide the writ petition at its admission stage.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Mandamus commanding the respondents to pay the selection grade of Rs. 8000 – 13500 with effect from 25.2.2002 and pay the difference of salary and other benefits for the period from 25.02.2002 till date.

Brief facts of the case as narrated by the petitioner are that a proposal for recruitment of additional staff for

expansion of Cooperative Drugs and Herbs Development Project was submitted by the Pharmaceutical Expert U.P. Cooperative Department, Ranikhet.

The State Government vide its order dated 17.12.1987 has informed the Registrar, Cooperative

Societies, U.P., Lucknow that 75 posts are sanctioned for the expansion of Cooperative Drugs and Herbs Development Project on temporary basis.

Learned counsel for the petitioner has submitted that petitioner was appointed on one of these posts on 23.02.1988 as Marketing Intelligence Avam Jansampark Adhikari Varg I on adhoc and temporary basis on the pay scale of Rs. 570 – 1100. After the recommendation of V Pay Commission, the petitioner's pay scale was revised to Rs. 5000 – 8000.

A perusal of the para 9 of the writ petition reveals that the State of U.P. vide its G.O. dated 02.12.2000 has decided to allow time scale by way of one additional increment in the revised scale to those officers/employees who have completed eight years of continuous satisfactory service on one post on 01.01.1996 or thereafter on a date. It was further provided in the said G.O. that on completion of six years of continuous satisfactory service from the date of granting the benefit of time scale, such officer/employee shall be allowed the next grade of promotional post as personal grade.

Respondent no. 3 vide order dated 17.7.2001 allowed the petitioner the benefit of one additional increment in the revised scale of Rs. 5000 – 8000 w.e.f. 25.2.1996 on completion of eight years of regular service in pursuance of Government Order dated 02.12.2000.

Learned counsel for the petitioner has submitted that on completion of six years of continuous and

satisfactory service from the date of granting benefit of time scale, the petitioner was entitled to get promotional pay scale in pursuance to para 2 of the aforesaid Government Order dated 02.12.2000. Since the promotional pay scale is the pay scale of Assistant Registrar, Cooperative Societies he is entitle to get pay scale of Assistant Registrar after completion of six years

of continuous and satisfactory service from the date of grant of time scale by way of one additional increment. Since he was granted one additional increment on completion of eight years of continuous and satisfactory service on 01.01.1996, as such, he should be granted the pay scale of Assistant Registrar, Cooperative Societies, which is the promotional pay scale after completion of six years of continuous and satisfactory service from 25.02.2002.

The submission of the learned counsel for the petitioner is that petitioner was appointed in Group I Service in the Department of Cooperative Societies and since the employee of Group I Sevice is eligible to be considered for promotion to the post of Assistant Registrar, so the petitioner is also entitled to be considered for promotion to the post of Assistant Registrar, which carries the pay scale of Rs. 8000- - 275 -13500 and consequently, as per Government Order dated 02.12.2000, the scale of Rs. 8000 - 275 - 13500 would be the next grade.

The petitioner is entitled to get time scale on completion of eight years of continuous and satisfactory service which he has already completed and after six years from the date of granting the benefit of one additional increment which too has been completed by the petitioner, he is entitle to get the promotional pay

scale of Rs. 8000 - 275 - 13500. The petitioner, on 19.03.2002 and again 31.07.2003, requested the respondent no. 3 to allow him the promotional grade of Rs. 8000 – 275 – 13500, however, the respondent in spite of granting the aforesaid pay scale has granted the next higher pay scale which Rs. 5500 – 175 – 9000 with effect from 25.02.2002.

Learned standing counsel has filed counter affidavit wherein it is pleaded that the petitioner was appointed as Marketing Intelligence Officer, under Cooperative Drug

and Herbs Development Project and the post was categorized as Group I post under the aforesaid Project. Since there is no promotional avenues consequently the petitioner was granted next higher grade which Rs. 5500 – 175 – 9000 after completion of 14 years of continuous and satisfactory service.

Two submissions have been raised by the learned counsel for the petitioner, first is that the petitioner has promotional avenues as he can be promoted to the post of Assistant Registrar, Cooperative Societies and as such, he is entitled to get the promotional pay scale which is pay scale of Assistant Registrar, Cooperative Societies as per Government Order dated 02.12.2000 and second that since the pay scale of the petitioner, who was appointed in Group I Service in the Cooperative Drugs and Herbs Development Project under the Cooperative Societies is the same to Group I Service in the Cooperative Department and as such, he is entitled to be promoted as Assistant Registrar, Cooperative Societies as 50% of the total strength of the post of Assistant Registrar, Cooperative Societies is to be filled by way of promotion.

I am not impressed with the arguments advanced by the learned counsel for the petitioner. Services of the Assistant Registrar, Cooperative Societies are governed

by Rules known as Uttar Pradesh Cooperative Service Rules, 1979. Part III, Rule 5 of the aforesaid Rules provides source of recruitment to the various categories of posts in the service, such as Additional Registrar, Deputy registrar, Processing Officer, Agriculture Officer, Assistant Registrar, pharmaceutical Expert, Refrigeration Engineer and Officer Incharge Cooperative Returns. It is provided that the post of Assistant Registrar shall be filled by two ways; first by promotion, on the basis of merit, from amongst the members of the Subordinate Cooperative Service, Group I, who have completed

minimum five years' of service as such on the first day of the year of recruitment. Second, by way of direct recruitment through the Commission, provided the recruitment to the posts of Assistant Registrars shall be so arranged that, as far s possible, 50 per cent of the posts are held by promotee and 50 per cent by direct recruits.

So from the perusal of the above Rule it is clear that 50 per cent of the posts of the Assistant Registrar shall be filled by direct recruitment through Commission and 50 per cent by way of promotion from amongst the member of Subordinate Cooperative Service Group I, who have put in minimum of 5 years' of service.

It is this Rule of which the petitioner is claiming benefit to the post of Assistant Registrar or promotional grade which is the pay scale of Assistant Registrar on the ground that since he was appointed in Group I Service of the Cooperative Societies, he is entitled for promotion to the post of Assistant Registrar or to get promotional pay scale which is the pay scale of Assistant Registrar i.e. Rs. 8000 – 275 – 13500.

It is true that the petitioner was appointed on Group I Service and he has completed 14 years of

continuous and satisfactory service but he was appointed under the Cooperative Drugs and Herbs Development Project within the Cooperative Department under Pharmaceutical Expert. No doubt the department is the Cooperative Department but the petitioner is the subordinate of the Pharmaceutical Expert and under Rule 5 of the aforesaid Rule, source of recruitment of Pharmaceutical Expert is by direct recruitment through Commission. The person appointed under Pharmaceutical Expert though was appointed in Group I service is not entitled to be promoted to the post of Pharmaceutical Expert. Since the post of Pharmaceutical Expert is to be filled only by way of direct recruitment

and there is only one post of Pharmaceutical Expert and that too, be filled only by way of direct recruitment through Commission. There is no substance in the submission made by learned counsel for the petitioner that he is entitled to get pay scale of Assistant Registrar, Cooperative Societies. Government Order dated 02.12.2000 specifically states that after completion of eight years of continuous and satisfactory service on one post the employee would be entitled to get time scale by way of one additional increment. The Government Order dated 02.12.2000 further says that if the employee has promotional avenues he will be entitled to get scale of promotional post after completing six years of continuous and satisfactory service from the date of grant of time scale and in case there is no promotional avenue to the employee then after completing six years of continuous and satisfactory service from the date of receiving of additional increment he will be entitled to get next higher pay scale.

In the present case, petitioner is Group I employee in the Cooperative Drugs and Herbs Development Project under Pharmaceutical Expert and since there is only one post of Pharmaceutical Expert and under the Rules the can only be filled by way of direct recruitment through commission. Petitioner has no promotional avenue and as such, he can be granted only next higher pay scale after completing 14 years of continuous and satisfactory service as per Government Order dated 02.12.2000, which has already been granted by the Government to the petitioner.

For the reasons recorded above, writ petition has no merit and as such, is dismissed. No order as to costs.

**(M.M. Ghildiyal, J)**

July 12, 2005
SKSharma